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Court of Small Causes is correct, and that the same rule is applicable to the Mofussil. An old Regulation (Regulation VII of 1819) provided that in such cases fifteen days' notice should be given by either party wishing to terminate the contract, and that in default of notice fifteen days' pay should be forfeited. But that Regulation has been repealed, and in the absence of any legislative enactment on the subject, we think that the Calcutta rule is generally and correctly followed.

K. M. C.

PRIVY COUNCIL.

SARABJIT SINGH (PLAINTIFF) *v.* F. C. CHAPMAN (DEFENDANT).

P. C. *
1886
February 10.

[On appeal from the Court of the Judicial Commissioner, Oudh.]

Lunatic—Act XXXV of 1858, *s.* 9—*Court of Wards in Oudh—Power to lease lands of proprietor disqualified from lunacy.*

The order of a Civil Court declaring, under Act XXXV of 1858, an Oudh talukdar to be of unsound mind and incapable of managing his affairs, renders him a disqualified proprietor within the meaning of s. 9 of that Act, with the result that the Court of Wards is authorized to take charge of his estate without a further order of the Civil Court appointing the Court of Wards to be manager.

A Civil Court having made an order declaring a talukdar to be of unsound mind and incapable of managing his affairs, and having at the same time appointed to be manager of his estate the Deputy Commissioner of the District, who also acted as manager of the Court of Wards :

Held, that a lease for more than five years made by the latter officer, as representing the Court of Wards, was not invalidated under s. 14 of the above Act, providing that no manager, appointed by the Civil Court under it, shall have power to grant a lease for any period exceeding five years.

APPEAL from a decree (19th September 1883) of the Judicial Commissioner of Oudh, affirming a decree (19th September 1882) of the District Judge of Rae Bareli.

The principal question now raised related to the provision in s. 14 of Act XXXV of 1858 (an Act to make better provision for the care of the estates of lunatics), that no manager appointed by the Civil Court under that Act to take charge of the estate of a person adjudged to be of unsound mind and

* *Present:* LORD BLACKBURN, LORD MONKSWELL, LORD HOBHOUSE, AND SIR R. COUCH.

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incapable of managing his affairs, should have power to grant a lease for any period exceeding five years.

Whether this had the effect of invalidating a lease of lands, part of a taluk, for twenty-five years, made by the Court of Wards, the Deputy Commissioner of the District having been appointed manager of the talukdar's estate by the same order which adjudged the talukdar to be a lunatic, was the point raised by this appeal.

On the 10th April 1872 Rae Jagat Bahadur Singh, talukdar of Bhadri, through whom the plaintiff claimed, was adjudged by the Deputy Commissioner of Sultanpur, under Act XXXV of 1858, to be of unsound mind and incapable of managing his affairs, and by the same order the Deputy Commissioner of Pertabgurh was appointed his guardian and manager of his estate.

On the 23rd June 1874, under the sanction of the Chief Commissioner, a lease for twenty-five years from the Court of Wards as manager of the Bhadri estate, was made of four villages belonging to it, at the annual rent of Rs. 15,565. This was registered on 6th July 1874.

On the 3rd February 1878, Rae Jagat Bahadur Singh died, and the plaintiff, as his successor, obtained possession of the Bhadri estate on the 1st October following.

The present suit was instituted on the 20th December 1881 to obtain a declaration that the lease was null and void, and for possession of the land comprised in it with mesne profits and costs. The defence, *inter alia*, was that the lease was valid having been duly sanctioned, the Chief Commissioner, as the principal revenue officer in Oudh, having plenary powers under the orders contained in paragraph 76 of the letter of the Government of India, dated 4th February 1876, which had obtained the force of law under Indian Councils Act 1861 (24 and 25 Vic. c. 67), s. 25.

The Court of first instance, the District Judge of Rae Bareli, held that the lease was originally valid, being within the powers of the Court of Wards to grant. He also held that, because the plaintiff had by the receipt of rent and other acts appeared to ratify the lease, acquiescing in the lessee's possession, the lease could not now be disputed. On the latter ground a decree

dismissing the suit was supported on appeal by the Judicial Commissioner, who was of opinion that the lease was originally invalid on account of the restriction in s. 14, although the plaintiff was not now in a position to assert its invalidity.

The plaintiff having presented this appeal,—

Mr. *J. Graham, Q.C.*, and Mr. *J. D. Mayne*, for the appellant, argued that the Judicial Commissioner had correctly held the lease to be invalid in its origin, and that both the Courts below had attributed too great an effect to such acquiescence on the part of the plaintiff as might have taken place. This had not affected the duration of the lease, the term remaining subject to the express language of s. 14 of Act XXXV of 1858.

Their Lordships intimated that it was in regard to the original validity of the lease for twenty-five years that they desired to hear argument.

Mr. *T. H. Cowie, Q.C.*, and Mr. *R. V. Doyne*, for the respondent, argued that the Deputy Commissioner, as representative of the Court of Wards, was not bound by the restriction in s. 14, although he had been appointed in the order declaring Rae Jagat to be a lunatic. He was manager of the lunatic's estate as representing the Court of Wards, without any authority as manager derived from the order of the Civil Court appointing him.

Mr. *J. Graham, Q.C.*, replied.

At the conclusion of the arguments their Lordships' judgment was delivered by

LORD BLACKBURN.—Their Lordships think that the decision of the Court below, which has been appealed against, was the right decision, but they do not agree exactly with the reasons given below.

Their Lordships have first to consider what point is raised by this case. The talukdar who owned the property in question became a lunatic, and an application was duly made for an inquiry into the state of his health under the 3rd section of Act XXXV of 1858. That application was made by the officer of the district where this taluk was situated; and the Civil Court to which the application was made, having caused notice to be given, did

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enter into an inquiry, and the result was that the talukdar was adjudged to be a lunatic. Thereupon the 9th section of Act XXXV of 1858 applied, which provides that: "when a person has been adjudged to be of unsound mind and incapable of managing his affairs, if the estate of such person or any part thereof consist of property which by the law in force in any Presidency subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorised to take charge of the same." At the time Act XXXV of 1858 was passed, Oudh was not part of the British dominions (1), but it has become so since, and their Lordships take it that the Court of Wards may be considered as having the same jurisdiction, and all the powers that the Court of Wards elsewhere would have had. Therefore, under s. 9, the Court of Wards was authorised "to take charge of the same." It seems to have been rather hastily concluded by the Judge below that the Court of Wards being authorised by the Legislature "to take charge of the same," required some further order from the Civil Court which adjudged the talukdar to be a lunatic to justify them in acting. Their Lordships think there is no ground for saying that, though s. 9 goes on to provide: "In all other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a manager of the estate."

It appears that the Civil Court, when they declared the talukdar to be a lunatic and so authorised the Court of Wards in Oudh to manage his property, did contemporaneously make an order appointing as the manager of the property the same person who acts as the manager under the Court of Wards. In the 14th section of the Act there is a provision that "every manager of the estate of a lunatic appointed as aforesaid," that is a manager appointed, not the Court of Wards, "may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic; but no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of

(1) This seems to be a mistake. Act XXXV of 1858 was passed on the 14th September 1858, and the annexation of Oude had then taken place.—*Ed.*

any immoveable property for any period exceeding five years." Their Lordships suppose that the object of this order probably was that the Court thought *ex majore cautela* "if there is any ambiguity about it we will take care that the Court of Wards has double power, and the manager shall act both under this Court and the Court of Wards." It may not have been judicious, but that is the utmost object the Court could have had, and if it was wrong it will not be a bit the worse.

Such being the case, the Court of Wards did enter into possession of the estate and the management of it. The lunatic continued to live till 1874, when a lease was granted, the details of which need not be further stated than to say that it was a lease for 25 years with various terms and provisions in it. It professes to be a lease of certain villages belonging to the Bhadri estate under the Court of Wards which was granted to Captain F. C. Chapman, with the sanction of the Chief Commissioner of Oudh, conveyed in a letter of the 2nd April 1874 to the Subordinate Commissioner. Their Lordships pause to ask what objection is there to this lease? No attempt is made to show that it was a lease improper in its terms, or that there was anything that amounted to an imposition, or that it was obtained by fraud or obtained improperly; but the one point relied upon against the lease is that it could not be granted for more than five years, and that objection, whatever might be its importance if the lease had been granted by one acting only under the authority of an appointment as manager by the Civil Court, does not seem to apply to a lease granted by the Court of Wards. That is the objection on which it is sought to set the lease aside.

The Judge of first instance entered into a great many questions which their Lordships do not pretend to follow; but there are a great many allegations to show that, even if the lease was originally void if granted for more than five years, it had been made good by subsequent acts after the lunatic was dead, and the present appellant (the plaintiff in the suit) had come into enjoyment of the estate. Their Lordships do not propose to enter into those questions at all, because they do not arise unless it can be shown that the objection that the lease exceeded a term of five years applies, and it certainly seems to their Lordships that

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it does not. The Judicial Commissioner on appeal arrived at the same result, that the lease was good, by a different process of reasoning, for he held that there were various things, by estoppel and otherwise, which prevented the plaintiff from setting aside an invalid lease. Their Lordships would require a good deal more thought and consideration than has yet been given to the case before they pronounced an opinion upon such a point as that; but if it be correct to say, as their Lordships are decidedly of opinion that it is, that the Court of Wards could grant such a lease as this, and that it was not impeachable merely because it exceeded five years in length, no other objection being made, this lease is good and nothing further arises upon it. The lease was not void and could not be set aside, and consequently it stands. If there were other objections than this they have not been raised. Their Lordships do not suppose there are any, and they therefore think that the judgment appealed from should be affirmed, although not for the same reasons by any means that were given below.

Their Lordships will therefore humbly advise Her Majesty that the judgment appealed from should be affirmed, and this appeal dismissed with costs.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Barrow & Rogers.*

Solicitors for the respondent: Messrs. *Sanderson & Holland.*

C. B.

APPELLATE CIVIL.

Before Mr. Justice Wilson and Mr. Justice O'Kinealy.

1886
March 4.

HURROSUNDARI DABI (PLAINTIFF) *v.* BHOJOHARI DAS MANJI (DEFENDANT).*

Second Appeal—Appeal to the High Court—General Clauses Act (I of 1868), s. 6—Effect of Repeal—Proceedings—Bengal Rent Act (VIII of 1885), s. 5.

The words "any proceedings commenced before the repealing Act shall have come into operation" in s. 6 of the General Clauses Act (I of 1868).

*Appeal from Appellate Decree No. 2292 of 1885, against the decree of S. H. C. Tayler, Esq., Judge of Burdwan, dated the 28th of July 1885, affirming the decree of Baboo Nilmoni Das, Munsiff of Raneegunge, dated the 28th of January 1885.